

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

77-1005
ORIGINAL WITH AFFIDAVIT OF MAILING

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-1005

B
BFS

UNITED STATES OF AMERICA,

Appellee,

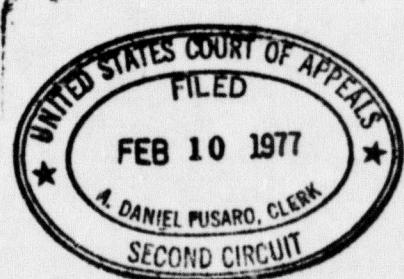
-against-

PETAR MATANIC,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX



MARTIN ELEFANT, Esq.
16 Court Street
Brooklyn, New York 11201
(212) 624-2240

PAUL B. BERGMAN, Esq.
25 Broadway
New York, New York 10004
(212) 269-4900

Attorneys for Defendant-Appellant
Petar Matanic

PAGINATION AS IN ORIGINAL COPY

Index to Appellant's Appendix

TAB

Docket Sheets.....	A
Indictment.....	B
Order of the District Court dated December 22, 1976.....	C
Order of the District Court entered December 27, 1976.....	D

A

007

OFFENSE PO [] JUDGE/MAGISTRATE Assigned	US	vs MATANIC, Petar	Case Filed Mo. Day
OFFENSE NO. []			9 21
DEMEANOR MIS []	207 1	0711X	No. of Dirs 5
FELONY FOR []	76GR-602		JUVENILE

US TITLE/SECTION 49:1472 & 18:2 Aircraft Piracy Conspiracy

ORIGINAL COUNTS → 2

U.S. MAG CASE NO. □ 73 11 822

BAIL • RELEASE

Fugitive
 Person Recog
 PSA
 Conditions

\$1,000.00
 Date
 Surety Bond
 Bail Not Made
 Collateral
 Status Changed
(See Docket)
 3rd Party Cust Other

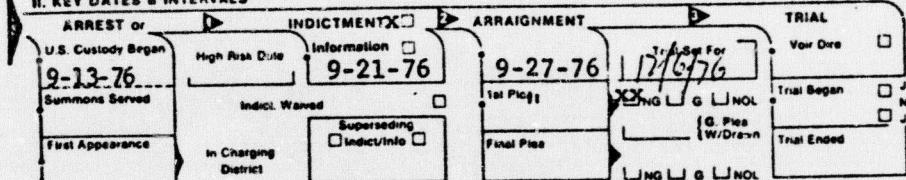
SENTENCE

Disposition of Charges

Convicted
 On All Charges
 Acquitted
 On Lesser Offense(s)

Dismissed
 WOP
 WP
 On Government Motion

H. KEY DATES & INTERVALS



MAGISTRATE

SEARCH WARRANT	DATE	INITIAL/NO.	INITIAL APPEARANCE DATE □ 9-13-76	INITIAL/NO.	OUTCOME
Issued			PRELIMINARY EXAMINATION OR Date Sched. □ 9-23-76		<input type="checkbox"/> DISMISSED
Return			REMOVAL HEARING Date Held □		<input checked="" type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Summons			<input type="checkbox"/> WAIVED <input type="checkbox"/> NOT WAIVED		<input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
Served			X INTERVENING INDICTMENT		
Arrest Warrant Issued					ASC 070B
COMPLAINT	9-12-76	HB			
OFFENSE (In Complaint)	9-12-76	HB			

T. 49 USC Sections 1472 & 1473 - Aircraft piracy

U.S. Attorney or Atty:

Thomas Pattison

ATTORNEYS Defense CJA Ret. Waived Self None / Other PD CD

Martin Elefart, Esq.

16 Court St

Brooklyn, N. Y. 11241

* Show last names and suffix numbers of other defendants on same indictment information
Z. Basic-1, J. Basic-2, Pesut-4, Vlasic-5

DATE DOCUMENT NO. PROCEEDINGS

EXCLUDABLE DELAY
(a) (b) (c) (d)

- 9-13-76 Defendant arraigned before Magistrate Cheein on a warrant issued by Judge Bramwell.
9-21-76 Indictment returned. Before Catoggio, Mag.
9-27-76 Before Bartels, J - case called - deft & counsel present- Interpreter sworn - deft arraigned and enters a plea of not guilty - adjd to Oct. 13 for status report.
10-13-76 Before Bartels, J - case called - deft & counsel present - adjd to Nov. 8, 1976 for bail hearing; to 12-1-76 for pre trial motions and 12-6-76 for trial
10/18/76 Stenographers transcript dated 10/13/76 filed.
10-21-76 Stenographer's Transcript dated 9-27-76 - Filed.
10-26-76 By BARTELS, J - Order filed that all bail and change of venue motions must be served and filed in this court on or before Oct. 27, 1976 at 12 Noon. U.S. Govt must file and serve any papers in opposition on or before Nov. 4, 1976 at 12 Noon. Hearing on the same will be held on Nov. 8, 1976 etc. (see order as indicated)
10-27-76 Order returned & Filed - Executed.

FORM AO-256

BEST COPY AVAILABLE

008

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V. ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)(1)

DATE	IV PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
			Initial Entry (B)	Start Date (B)	End Date (B)	LJ Code (C)
10-27-76	Notice of Motion for dismissal of the indictment - Filed.					
10-28-76	Before Bartels, J.- Case Called. Deft. & Counsel Present. Paul Bergman appointed as co-counsel for Deft.					
10-29-76	Notice of Motion for reduction of bail, pursuant to Rule 12 and Rule 46 returnable 11-8-76. - Filed.					
11-5-76	Letter filed dated Nov. 4, 1976 received from Chambers from AUSA Pattison for adjournment to Nov. 8, 1976					
11-5-76	Stenographer's Transcript dated October 28, 1976 - filed.					
11-8-76	Motion for Bill of Particulars - filed. (Forwarded to Chambers)					
11-8-76	Motion for Discovery and Inspection and all exculpatory Material.- filed. (forwarded to Chambers)					
11/9/76	Stenographers transcript dated 10/28/76 filed.					
11-9-76	Govts Brief filed in opposition to defts motion to dismiss counts 1 and 2 for improper venue					
11-10-76	Govts. Amakkarxenxxm Affidavit in support of application for bail reduction filed and Defts affidavit (Martin Elefant, Esq.) in support of application for bail reduction filed					
11-10-76	Before Bartels, J.- Case Called. Deft. & Counsel present. Interpreter sworn. Motion for an order granting a change of venue argued. - decision reserved. Motion for a reduction of bail argued and denied.					
11-15-76	Affidavit of Thomas R. Pattison - filed.					
11-18-76	Notice of motion filed to suppress statements					
11-18-76	Stenographer's Transcript dated November 10, 1976 filed.					
11-19-76	By Bartels, J - Order filed that AUSA Pattison disclose to all defense counsel in this case any statements of defts in this case provided to any one deft under Rule 16.					
11-22-76	Government's response to deft. matanic's motion for discovery and inspection and bill of particular filed and forwarded to chambers.					
11-22-76	By BARTELS, J - Order filed denying defts motion for severance.					
1-22-76	By BARTELS, J - Order filed that counts 1 and 2 should be dismissed for lack of venue etc. Prior to the filing of the order dismissing counts 1 and 2 it is suggested that the Govt notify all defts that a prompt and speedy trial can still be had in the Eastern Dist. of NY on 12-6-76 as originally scheduled.					
11/23/76	Notice of Appeal filed.					
11/23/76	Docket entries and duplicate of Notice of Appeal mailed to the C of A.					

TIME AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs

PETER MATANIC

76 CR 602

Yr. Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DE		
		(a)	(b)	(c)
11-24-76	Motion for an order staying until 12-13-76 the order entered on Nov. 22, 1976 dismissing cts. 1 and 2- (recv'd From Chambers)			
11-24-76	Before BARTELS, J - case called - defts & attys present - status report held and concluded - Order of 11-22-76 dismissing cts. 1 and 2 is stayed for 10 days until Dec. 3, 1976.			
11/24/76	By BARTELS, J. - Ordered that the order of 11/22/76 for dismissal of counts one and two of the indictment is stayed until 12/3/76.			
11-29-76	Order received from the Court of Appeals that the record be filed on or before December 22, 1976 filed.			
11-29-76	Stenographers transcript filed dated 11-24-76			
12-6-76	Notice of Motion and Affidavit filed for continuing the stay of the order dismissing counts 1 and 2 of the indictment, and staying the trial of count 3 of the indictment. (forwarded to Chambers)			
12-6-76	Before Bartels, J.- Case Called. Deft. & Counsel present. Govt's. motion for a continuance of the stay of order of 11-22-76 until decision of court of appeals is rendered argued and granted. Deft's. motion for reduction of bail argued and denied.			
12-7-76	Stenographers transcript filed dated 12-6-76			
12-8-76	Voucher for Compensation for Expert Services filed.			
12-6-76	By Bartels, J - Order filed that the stay of the order dismissing counts 1 and 2 is extended pending determination of the appeal and that bail is contd and trial of ct.3 is stayed pending appeal.			
12-16-76	Affidavit of Service filed.			
12-16-76	Affidavit of Thomas R. Pattison filed with Court Exhibits one through four attached.			
12-16-76	Affidavit of Thomas R. Pattison filed.			
12-16-76	Letter written by AUSA Pattison to Judge Bartels to amend certain statements made during oral argument upon the pending venue motion in the case. - filed.			
12-16-76	Notice of Motion for an order pursuant to Rule 46 releasing the deft from custody pending appeal and trial, filed and forwarded to Chambers. (Returnable December 20, 1976 at 9:30 A.M.)			
12-20-76	Before BARTELS, J.-Case called-Deft and counsel present- Interpreter sworn-Deft's motion for reduction of bail Motion argued-Motion denied-Deft's motion to Dismiss Argued-Motion denied-			
12-20-76	By Bartels, J.- Order filed that the motion to release the deft. from custody pending appeal and trial is under the circumstance denied.			

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
12/22/76	Court Exhibit A filed.				
12/22/76	Govts brief in opposition to defts motion for reduction of bail filed.				
12/22/76	Letter filed dated 10/18/76 from AUSA Pattison to set date for motions.				
12-22-76	Deft's. Notice of Appeal filed.				
12-22-76	Docket entries and duplicate of Notice of appeal mailed to the Court of Appeal.				
12-22-76	Record on Appeal certified and hand delivered to the Court of Appeal by Sara Schownwetter.				
12-22-76	By Bartels, J.- Order filed that the motion of the deft. for the appointment of an investigator under the Criminal Justice Act was, under the present circumstances, denied.				
12-27-76	Stenographer's Transcript dated December 20, 1976 filed.				
12-27-76	Acknowledgment received from the Court of Appeals for the Record on Appeal filed.				
12-27-76	By Bartels, J Order filed ordering that the motion for order of release pursuant to T-18, U.S.C., Section 3164 is denied.				
1-3-77	Notice of Appeal for an order filed dated December 27, 1976 which order denied the deft's. motion for release from custody filed.				
1-3-77	Duplicate of Notice of Appeal and Docket entries mailed to the Cour of Appeals.				
1-10-77	Order received from the Court of Appeals that the record be docketed on or before January 10, 1977 filed.				
1-10-77	Supplemental record on Appeal certified and mailed to the Court of Appeals.				
1.28.77	Acknowledgment received from the Court of Appeals for the Supplemental Record on Appeal filed.				
1.31.77	Letter filed received from Chambers to Judge Bartels from Michael Asen that the case is on the calendar for status report on 2.2.77 at 3:00 P.M.				
2.2.77	Before Bartels, J.- Case Called. Deft. not present. Counsel present. Case adjd. to 2.24.77 for Motions. Case adjd. to 3.14.77 for Trial.				
2.3.77	Stenographer's Transcript dated February 2, 1977 filed.				

B

RP:rd
763,251

FILED
U. S. DISTRICT COURT, N.Y.

SEP 21 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X
TIME A.M.
P.M.

UNITED STATES OF AMERICA

I N D I C T M E N T

-against-

ZVONKO BUSIC, JULIENNE BUSIC,
PETAR MATANIC, FRANE PESUT and
MARK VLASIC,

Cr. No.
(T. 49, U.S.C. §1472(i);
T. 18, U.S.C. §§371, 2)

Defendants.

X
76CR 602

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 10th and 11th days of September, 1976, within the Eastern District of New York and elsewhere, the defendants, ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC, attempted to commit and did commit air piracy as defined in 49 United States Code, Section 1472(i), (2), in that the defendants, ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC, by threat of force and violence and with wrongful intent did attempt to and did seize and exercise control of an aircraft within the special aircraft jurisdiction of the United States, to wit; a Boeing 727 known as Trans World Airlines Flight 355 bound from LaGuardia Airport, Queens, New York en route to O'Hare Airport, Chicago, Illinois, the commission of which offense resulted in the death of New York City Police Officer Brian Murray. (Title 49, United States Code, Section 1472(i); Title 18, United States Code, Section 2).

COUNT TWO

On or about the 10th and 11th days of September, 1976, within the Eastern District of New York and elsewhere, the defendants, ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC, attempted to commit and did

commit air piracy as defined in 49 United States Code, Section 1472(i)(2), in that the defendants, ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC, by threat of force and violence and with wrongful intent did attempt to and did seize and exercise control of an aircraft within the special aircraft jurisdiction of the United States, to wit; a Boeing 727 known as Trans World Airlines Flight 355 bound from LaGuardia Airport, Queens, New York and enroute to O'Hare Airport, Chicago, Illinois. (Title 49, United States Code, Section 1472(i); Title 18, United States Code, Section 2).

COUNT THREE

On or about and between the 6th day of September, 1976, and the 11th day of September, 1976, both dates being approximate and inclusive, within the Eastern District of New York, the defendants ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC did knowingly and wilfully conspire to commit an offense against the United States, in violation of Title 49 Section 1472(i), United States Code, by conspiring to commit air piracy as defined in 49 United States Code, Section 1472(i)(2) by threat of force and violence and with wrongful intent by seizing and exercising control of an aircraft within the special aircraft jurisdiction of the United States. (Title 18, United States Code, Section 371).

In furtherance of said unlawful conspiracy the defendants ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC committed the following overt acts:

OVERT ACTS

1. On or about the 10th day of September, 1976, within the Eastern District of New York the defendants ZVONKO BUSIC, JULIENNE BUSIC, PETAR MATANIC, FRANE PESUT and MARK VLASIC boarded a Boeing 727 known as Trans World Airlines Flight 355 at LaGuardia Airport, Queens, New York.

2. On or about the 10th day of September, 1976, on board Trans World Airlines Flight 355 shortly after said flight left LaGuardia Airport, Queens, New York, defendant ZVONKO BUSIC handed a letter to flight steward Thomas Van Dorn which stated:

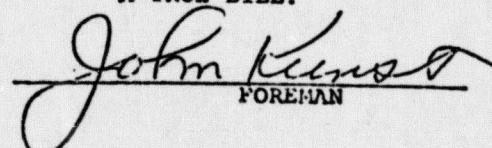
- "1. This airplane is hijacked.
2. We are in possession of five gelignite bombs, four of which are set in cast-iron pans, giving them the same kind of force as a giant grenade.
3. In addition, we have left the same type of bomb in a locker across from the Commodore Hotel on 42nd St. To find the locker, take the subway entrance by the Bowery Savings Bank. After passing through the token booth, there are three windows belonging to the bank. To the left of these windows are the lockers. The number of the locker is 5713.
4. Further instructions are contained in a letter inside this locker. The bomb can only be activated by pressing the switch to which it is attached; but caution is suggested.
5. The appropriate authorities should be notified from the plane immediately.
6. This plane will ultimately be heading in the direction of London, England."

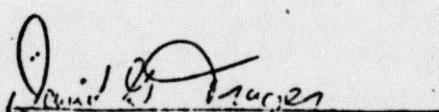
3. On or about the 10th day of September, 1976, on board Trans World Airlines Flight 355 shortly after said flight left LaGuardia Airport, Queens, New York, the defendants FRANE PESUT and MARK VLASIC exhibited metal devices to the passengers and crew of Trans World Airlines Flight 355 and indicated said metal devices were bombs.

4. A bomb was placed in a subway station locker in the vicinity of 42nd Street and Lexington Avenue

5. On or about the 6th day of September, 1976, a Trans World Airlines ticket was purchased at LaGuardia Airport, Queens, New York in the name of S. Radic.

A TRUE BILL.


John Kenos
FOREMAN


DAVID G. TRAGER
United States Attorney
Eastern District of New York

C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :

v. :

Z.VONKO BUSIC, JULIENNE BUSIC,
PETAR MATANIC, FRANE PESUT
and MARC VLASIC, : ORDER
: 76-CR-602

Defendants. :
-----x

WHEREAS the defendant Petar Matanic has moved this court for the appointment of an investigator under Section 3006A(e)(1) of the Criminal Justice Act; and

WHEREAS this court dismissed two counts of the indictment in the above matter on the ground of lack of venue in this district; and

WHEREAS the government has appealed this decision to the court of appeals which has not yet decided the appeal; and

WHEREAS this court believes that the appointment of such an investigator is necessary and proper by the court that has venue jurisdiction of the two important counts of the indictment, which at the present time this court does not have; and

WHEREAS this court believes that it should not make any appointment of such investigators until a decision is rendered by the court of appeals designating which district court has jurisdiction of the two main counts of the indictment; and

WHEREAS this court has previously informed counsel for the defendant Petar Matanic, on December 6, 1976, of its refusal to make any appointment of such investigators until a decision is rendered by the court of appeals,

NOW, THEREFORE, it is hereby

ORDERED that the motion of the defendant Petar Matanic for the appointment of an investigator under the Criminal Justice Act is, under the present circumstances, hereby denied.

Dated: Brooklyn, N.Y.,
December 22, 1976.

United States District Judge

D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★-x DEC 27 1976 ★

UNITED STATES OF AMERICA

TIME A.M. _____
P.M. _____

-against-

ZVONKO BUSIC, JULIENNE BUSIC,
PETAR MATANIC, FRANE PESUT, and
MARK VLASIC, : ORDER
Defendants. : 76-CR-602

:

x

WHEREAS, the district court had previously set this case down for trial on December 6, 1976, within 90 days of the arrest of the defendant Petar Matanic; and

WHEREAS, the defendants, including Petar Matanic, made it plain that, prior to the dismissal of counts 1 and 2 of the indictment, hundreds of witnesses would be required for the trial and that therefore they would probably not be ready to try the case on that date; and

WHEREAS, the defendants, including Petar Matanic, moved to dismiss counts 1 and 2 of the indictment on October 27, 1976, on the ground of improper venue, which motion was granted on November 22, 1976; and

WHEREAS, the United States has, on November 23, 1976, filed a notice of appeal from the aforesaid order of dismissal and has diligently prosecuted said appeal by seeking an expedited schedule from the Court of Appeals, which appeal will be heard on January 14, 1977; and

WHEREAS, ninety (90) days having elapsed since the original incarceration of the defendant Petar Matanic and counsel for said Petar Matanic having moved, on December 20, 1976; for an order of release pursuant to Section 3164,

18 U.S.C., alleging, as a ground therefor, that the United States has not filed a notice of readiness to try the case; and

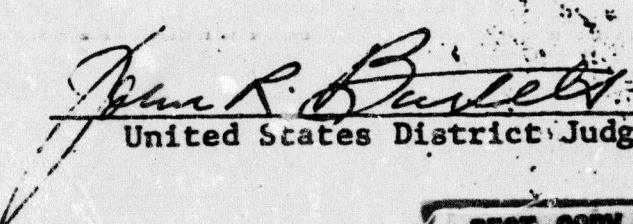
WHEREAS, since the case has been definitely set down for trial before such 90 days have elapsed, such notice of readiness is unnecessary and in addition thereto the Government had stated that it was ready to proceed with the trial on December 6, 1976; and

WHEREAS, the Court having heard argument on the aforesaid motion and having previously found the defendant Petar Matanic was a high risk defendant under 18 U.S.C. §3148; and it appearing that excluding the period of time during which the aforesaid pretrial venue motion was heard and decided and the period of time for the prosecution of the aforesaid appeal, the ninety day period for trial prescribed by the Speedy Trial Act of 1974 has not run;

NOW, THEREFORE, it is hereby

ORDERED that the motion be and hereby is denied.

Dated: Brooklyn, N.Y.,
December 27, 1976.


Peter R. Biester
United States District Judge

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PROOF OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

IRENE COHEN , being duly sworn deposes
and says:

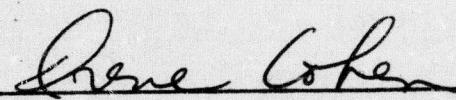
1. I am over 18 years of age and am not a party
to this action.

2. On February 9th 1977, I served the
foregoing Appellant's Appendix upon

David G. Trager,
United States Attorney for the
Eastern District of New York

by depositing [a] true cop[y] [REDACTED] thereof in an official
depository under the exclusive care and custody of the United
States Postal Service located at 25 Broadway, New York, New York
each enclosed in a postpaid wrapper, which wrapper [ed] [was]
[REDACTED] addressed as follows:

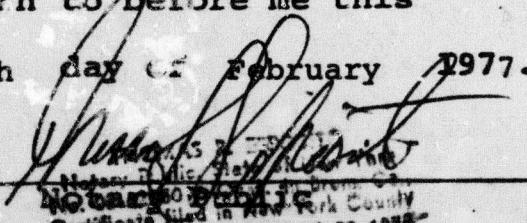
Hon. David G. Trager
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201



Irene Cohen

Sworn to before me this

9th day of February 1977.



Notary Public
No. 000000000000000000
Certificate Filed in New York County
Commission Expires March 30, 1978